

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket 96-45
)	
NPCR, INC. d/b/a NEXTEL PARTNERS)	DA 04-998
)	
Supplement to Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the State of Virginia)	
_____)	

**NEXTEL PARTNERS' REPLY TO COMMENTS
OF THE NTELOS TELEPHONE COMPANIES**

NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners"), by its undersigned counsel, hereby submits its "Reply" to the Comments filed on May 7, 2004 by The NTELOS Telephone Companies ("NTELOS") in the above-captioned proceeding, which concerns Nextel Partners' Petition for Designation as an Eligible Telecommunications Carrier ("Petition") in the State of Virginia¹ as recently supplemented in compliance with the requirements of the Commission's *Virginia Cellular Order*.² NTELOS acknowledges that Nextel Partners has supplemented its Petition in accordance with the requirements of the *Virginia Cellular Order*. As highlighted by this admission, the record demonstrates that the Commission should immediately proceed to a grant of Nextel Partners' Petition for Eligible Telecommunications ("ETC") status in the State of Virginia.

¹Nextel Partners' Petition for the Designation as an Eligible Telecommunications Carrier in the State of Virginia (hereinafter, the "Petition") was filed on April 23, 2003 in Commission Docket No. 96-45.

² *In the Matter of Federal-State Joint Board on Universal Service: Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, 19 FCC Rcd 1563 (2004) ("*Virginia Cellular Order*").

I. NTELOS ACKNOWLEDGES NEXTEL PARTNERS' COMPLIANCE WITH THE COMMISSION'S *VIRGINIA CELLULAR ORDER*

In its May 7, 2004 Comments, NTELOS identifies itself as a pair of incumbent local exchange carriers ("ILECs") that operate in rural areas of the Shenandoah Valley in Virginia.³ NTELOS notes that its affiliates "have extensive wireless operations in Virginia and West Virginia, competing with Nextel Partners and other wireless carriers."⁴ Admitting that the *Virginia Cellular Order* currently serves as the standard for evaluating wireless ETC applications,⁵ NTELOS specifically acknowledges that it "does not object to the manner in which Nextel has reflected the provisions of the *Virginia Cellular Order*" in its March 24, 2004 Supplement.⁶ This admission from a direct competitor that Nextel Partners' Supplement complies with the requirements of existing law is entitled to great weight and the Commission should immediately proceed to a grant of the Petition.

II. NTELOS REQUEST FOR DELAY OF THIS PROCEEDING IS CONTRARY TO THE *VIRGINIA CELLULAR ORDER*

Despite acknowledging that Nextel Partners' Petition meets the standards of the *Virginia Cellular Order*, NTELOS nevertheless contends that "fundamental questions regarding the future of the Universal Service Fund must be resolved prior to the FCC granting ETC authorizations in the service areas of rural ILECs."⁷ NTELOS argues that until "both the Universal Service and the Access Charge pictures for rural ILECs are clearer," designation of additional ETCs in study areas served by rural ILECs is not in the

³ NTELOS Comments at 1.

⁴ *Id.*

⁵ "The *Virginia Cellular Order* is essentially functioning as the 'de facto' ETC rules for wireless applications unless and until the FCC creates the permanent ETC guidelines advocated by the Joint Board." NTELOS Comments at 2.

⁶ *See id.* at 2.

⁷ *See id.*

public interest.⁸ NTELOS contends that because the Commission’s *Virginia Cellular Order* and the recent *Recommended Decision* of the Joint Board⁹ “are not final rulemaking determinations” neither order should serve as the basis for permitting additional competitive ETC entry in rural ILEC study areas. In light of the pending policy issues, NTELOS asks that “the Commission hold in abeyance that portion of the Nextel petition seeking certification in rural ILEC study areas.”¹⁰ NTELOS’ request for delay, however, is contrary to the Commission’s ruling in the *Virginia Cellular Order* and must be rejected.

NTELOS’ Comments address matters of general policy such as the potential effect of a “primary line restriction” on rural ILECs, the differences in regulatory treatment of rural ILECs and CMRS carriers, and the support afforded to rural ILECs by access charges that are well beyond the scope of the present proceeding. This proceeding relates solely to the question of Nextel Partners’ qualifications to be granted ETC status, and is not a general forum for the consideration of national policies regarding Universal Service or inter-carrier compensation. The policy arguments raised by NTELOS cannot properly be addressed in the context of determining Nextel Partners’ qualification for ETC status.¹¹

⁸ *Id.*

⁹ *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, 19 FCC Rcd 4257 (2004) (“*Recommended Decision*”).

¹⁰ NTELOS Comments at 5.

¹¹ *See, e.g., In the Matter of Federal-State Joint Board on Universal Service; RCC Holdings, Inc. Petition for Designation as an Eligible Telecommunications Carrier Throughout its Licensed Service Area In the State of Alabama*, 17 FCC Rcd 23532 at ¶¶ 22 and 26 (2002) (“*RCC Order*”) at ¶ 32 (“We recognize that these parties raise important issues regarding universal service high-cost support. We find, however, that these *concerns* are beyond the scope of this Order, which considers whether to designate

Nor is it appropriate for the Commission to delay consideration of Nextel Partners' Petition until the policy issues raised by NTELOS are resolved, which may take years. The Commission's *Virginia Cellular Order* clearly sets forth the requirements that a Petitioner must satisfy in order to be granted ETC status. In setting forth those standards, the Commission was aware of the important unresolved policy issues relating to Universal Service but determined that further delay in the consideration of ETC petitions was not in the public interest. Balancing the importance of moving to decision on pending ETC petitions with the unresolved policy issues the Commission held, "[t]he framework enunciated in this Order shall apply to all ETC designations for rural areas pending further action by the Commission."¹² The Commission elaborated:

[W]e note that the outcome of the Commission's pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future. This Order is not intended to prejudge the outcome of that proceeding."¹³

Thus, it is clear that in the *Virginia Cellular Order* the Commission rejected the approach now advanced by NTELOS that consideration of pending ETC applications be held in abeyance indefinitely. Rather, the Commission adopted standards that allow it to move forward to decision on pending ETC petitions, while acknowledging that those standards are subject to amendment by future Commission actions.

a particular carrier as an ETC.")

¹² *Virginia Cellular Order* at ¶ 3.

¹³ *Id.* at ¶ 12.

The Commission is bound to abide by *existing* rules and policies in all proceedings,¹⁴ and this proceeding is no exception to that rule. The Commission should apply the standards of the *Virginia Cellular Order* and grant Nextel Partners' Petition.

III. CONCLUSION

Because all applicable legal and public interest requirements have been met, Nextel Partners requests that the Commission promptly grant Nextel Partners' Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia.

Respectfully submitted,

NPCR, INC. d/b/a NEXTEL
PARTNERS

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¹⁴ *CSRA Cablevision, Inc.*, 47 FCC 2d 572 at ¶ 6 (1974) ("Under the Administrative Procedure Act and the relevant judicial decision, the Commission is bound to follow its existing rules until they have been amended pursuant to the procedures specified by that act.").